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Of Attorneys for Plaintiff,

Brusco Tug & Barge, Inc.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

**BRUSCO TUG & BARGE, INC., a  
Washington corporation,**

Plaintiff,

vs.

**BIGFOOT LGM, INC., a Washington  
corporation,**

Defendant.

**Cv. No. 10-1138 ST**

In Admiralty

COMPLAINT

COMES NOW plaintiff Brusco Tug & Barge, Inc. ("Brusco") and alleges as follows:

**JURISDICTION**

1. This is a case of admiralty maritime jurisdiction as hereinafter more fully appears. Plaintiff's claim is an admiralty and maritime claim within the meaning of FRCP 9(h). This Court has jurisdiction pursuant to 28 U.S.C. § 1333. Jurisdiction and venue are also vested in this Court by the agreement of the parties, as alleged more fully below.

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## **PARTIES**

2. At all material times, Brusco was and now is a corporation, organized under the laws of the State of Washington.

3. At all material times, defendant was and now is a corporation, organized under the laws of the State of Washington.

## **FACTUAL ALLEGATIONS**

4. On or about March 17, 2009, plaintiff and defendant entered a Contract of Affreightment ("Contract"). A true and correct copy of the Contract is attached hereto as Exhibit A.

5. Under the Contract, Brusco agreed to provide a tug (the RACHELE BRUSCO or substitute), and two barges (the LUCKY LOGGER and MR. CHIPS or substitutes) for defendant's use in Alaska.

6. The Contract provides for delivery and redelivery of the vessels at Cathlamet, Washington. The Contract provides, among other terms, that the vessels would be hired at \$11,000 per day, plus fuel and lube.

7. Brusco delivered the vessels pursuant to the terms of the Contract at Cathlamet, Washington, on or about April 15, 2009.

8. Defendant used the vessels in Alaska as contemplated by the Contract.

9. When defendant confirmed to Brusco that defendant had no more cargo available and no further use for the vessels, Brusco demobilized the vessels from Alaska to Cathlamet.

10. The vessels were redelivered at Cathlamet pursuant to the terms of the Contract on November 12, 2009.

11. Brusco invoiced defendant periodically for hire and expenses due under the Contract. Defendant paid part of some of those invoices.

12. The Contract provides that defendant would load, stow and discharge any cargo. The Contract further provides that defendant would be responsible for and liable to plaintiff for

damage to either barge covered by the Contract caused during loading, stowage or discharge of cargo, including grounding or bottom damage during loading or discharge operations or while transiting shallow or narrow channels if directed by defendant.

13. The barge MR. CHIPS sustained damage during cargo operations covered by the Contract. The damages are reasonably valued at \$449,711.

### **CLAIM FOR RELIEF**

#### **(Breach of Contract)**

14. On balance, after accounting for all just and proper charges under the Contract and credits for all payments and remaining fuel, defendant owes \$536,721.98 for hire, fuel and lubes under the Contract.

15. Brusco made demand on defendant on November 18, 2009, for \$536,721.98. Defendant has failed and refuses to pay the full balance owed.

16. Brusco made demand on defendant for \$449,711, the reasonable costs to repair the barge MR. CHIPS on February 5, 2010. Defendant has failed and refuses to make any payment or otherwise compensate Brusco for damage to the MR. CHIPS.

17. The Contract provides that all sums due under the Contract, if unpaid when due, shall bear interest at the rate of eighteen percent (18%) per annum from and after the date upon which the same shall have become due until paid in full.

18. The Contract provides that, in the event payment is not made when due, Brusco is entitled to recover its reasonable attorneys' fees, costs and expenses of collection.

19. Defendant has not made payment when due, and has forced Brusco to institute this proceeding for collection and is liable for Brusco's attorney fees, costs and expenses of collection.

20. Under the Contract, Bigfoot agreed to submit to the jurisdiction of this Court for any suit to enforce any provision of the Contract.

**PRAYER FOR RELIEF**

WHEREFORE, Brusco respectfully requests that this Court enter judgment in favor of Brusco and against defendant for:

1. Damages in the amount of \$986,432.98 or such other amount according to proof, for all charges due and owing under the Contract;
2. Prejudgment interest at the rate of 18% per annum from the date due until paid;
3. Reasonable attorney fees and costs and expenses incurred in collecting the amounts due under the Contract;
4. Costs and disbursements incurred herein; and
5. Such other relief as the Court deems just and equitable.

Dated this 21st day of September, 2010.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: 

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